

Not Intended for Print Publication

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

V.

1.11 ACRES OF LAND, MORE OR LESS, SITUATED IN LEE COUNTY, VIRGINIA, ET AL.,

Defendants.

Case No. 2:04CV00044

OPINION AND ORDER

By: James P. Jones
Chief United States District Judge

Sara Bugbee Winn, Assistant United States Attorney, Roanoke, Virginia, for Plaintiff; William E. Bradshaw, Big Stone Gap, Virginia, for Defendant R.E.J.; Daniel Fast, Wise, Virginia, for Defendant M.S.J.

In this condemnation case, two of the landowners who are minors and are represented by guardians ad litem, have moved the court for an order authorizing them to engage an appraiser at the expense of the government. The government opposes the motion.

The land in question in this case is taken by the United States in connection with a certain aquatic ecosystem restoration and protection project. The property was formerly owned by Robert L. Jones. He died intestate, leaving his spouse, two minor children, R.E.J. and M.S.J., and an adult child. The widow and the adult child have

agreed to a fair market value for the property of \$3,500, and the government has paid that amount into court. The two minor children, each entitled to a portion of the award, are represented by separate guardians ad litem appointed by this court. The guardians ad litem have obtained a written proposal from a qualified real estate appraiser offering to appraise the land and file a report thereof for a fee of \$1,000.

In their joint motion, the guardians ad litem contend that the minors are unable to afford the cost of obtaining an expert appraisal of the property and thus the guardians ad litem are unable to determine whether the value placed on the property by the government is proper. The government argues that the only possible basis for the government's liability for the expense of an appraiser would be to a prevailing party under the Equal Access to Justice Act ("EAJA"), 28 U.S.C.A. § 2412 (West 1994 & Supp. 2005), and that a prospective award under the EAJA is improper. *See* 28 U.S.C.A. § 2412(d)(2)(H) (West Supp. 2005) (providing that "prevailing party" in eminent domain proceedings means a party who obtains a final judgment the amount of which is at least as close to the highest valuation that is attested to at trial on behalf of the property owner as it is to the highest valuation that is attested to at trial on behalf of the government); *United States v. 2.61 Acres of Land*, 791 F.2d 666, 672 (9th Cir. 1985) (holding that landowner was not "prevailing party" and thus not

entitled to award under EAJA in condemnation case where amount of compensation had not yet been determined).¹

The government is correct. Because of sovereign immunity, awards against the government are prohibited without its consent. That doctrine limits awards of costs in condemnation actions to those permitted by statute. *See* 13 Powell on Real Property § 79F.06[3][c] (Michael Allan Wolfe ed., Sept. 2004). The fact that the landowners here are minors does not permit me to overlook that prohibition.

For the foregoing reasons, it is **ORDERED** that the Joint Motion for Authorization to Engage Appraiser is DENIED.

ENTER: September 9, 2005

/s/ JAMES P. JONES
Chief United States District Judge

¹ Another federal statute, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C.A. §§ 4601-4655 (West 2003), allows an award of a landowner's appraisal fees where the government abandons the proceeding or the final judgment holds that the government cannot obtain the property. *See id.* § 4654(a). It is obviously not applicable to the present motion.